

A journey into causes of corporate misbehaviour

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Valorisation addendum

This addendum outlines how the research in this book can be valorised.¹ It will provide a brief summary of findings before reflecting on valorisation.

Research summary

This book focuses on law and the problem of transnational corporate (TNC) misbehaviour. It asks whether corporate law (CL), corporate governance (CG) and corporate social responsibility (CSR) – the three main disciplines regulating corporate behaviour – are succeeding in aligning TNC behaviour with the public interest. It concludes that these disciplines and their regulation are failing in this endeavour and that they should be reformed. The overall finding is that the underlying methods and theories of CL, CG and CSR are *methodologically suboptimal* and *politically biased*.

Corporate legal disciplines and regulation are *methodologically suboptimal* because they draw on a narrow, liberal-economic, range of perspectives on the nature of corporations, human behaviour and society. They insufficiently integrate, for example, the non-economic interactions between corporations, and between corporations and states. The consequence is that the structural effects of corporate advertising, corporate lobbying, corporate cartels and so on are assumed away in the design of corporate laws. It is unlikely, as you can imagine, that corporate regulation will be effective when it is based on a partial, often reductionist, image of their operations and context.

Corporate legal disciplines and regulation are *politically biased* because they are currently pre-determined to create a liberal-economic corporate utopia. This is embedded in their intellectual architecture which traditionally assumes that markets are fundamental to civilised society, that people are rational and materially self-interested, and that corporations should be regulated like natural persons. These premises shield corporations from liability and entrench their power. They ensure, moreover, that corporate social, environmental and other harms can be blamed on poor market regulation and poor consumer choices. The consequence is that corporations are not recognised as responsible for corporate harms, but that individuals, market failures and states are held responsible. These assumptions, when translated into regulation, embed a pro-corporate perspective on the relationships between states, corporations and individuals into the regulatory framework of our societies.

¹ “used to create value from knowledge, by making knowledge suitable and/or available for economic and/or social use and for translation into competitive products, services, processes and activities” (definition from the Landelijke Commissie Valorisatie, *Waardevol: Indicatoren voor valorisatie*, 2011, The Hague, Rathenau Institute, p. 8).

There are, fortunately, many things that corporate legal researchers can do to avoid methodological suboptimality and political bias. I provide several examples in the reform-related Chapter:

- I elaborate, for example, on an impartial tool that researchers can use to combine disciplines and *evaluate whether particular exchange opportunities should be permitted, regulated or forbidden*. This tool is based on the finding that the extent of TNC misbehaviour is correlated with the extent to which corporations are permitted to engage in market transactions. A corporation is, for example, less likely to wield undue influence over an auditor if it is forbidden or restricted in its ability to purchase consultancy services from this same auditor. We can use this tool to carefully design the scope of corporate exchange opportunities and decrease the potential for corporate harm.
- I also suggest that *corporate analysis may be impaired due to an excessive focus on conflicts of interest*. I develop an original ‘confluent theory’ which allows us to examine how *confluences* of interest between organisational and corporate agent interests may contribute towards corporate harm and misbehaviour. This method adds a new dimension to corporate analysis and should lead to new avenues for corporate research and regulation.
- I propose, moreover, that *the public-private divide should be rejected as a basis for corporate regulation*. This divide applies to state-individual relations, not society-organisational relations, in liberal democracies and is a primary source of political bias in corporate legal disciplines and regulation. It has come to frame numerous polarised debates in the corporate legal literature, such as those on the international legal status of corporations, their shareholder vs. stakeholder orientation and whether they should be regulated primarily through hard or soft law. It was originally developed by liberal political philosophers to empower and protect the rights and freedoms of natural persons from abuses of state religious, monarchical and other power. It was not, however, concerned with the role of organisations in society; there is no evidence that Smith, Locke, Rousseau and others developed the public-private distinction in relation to corporations. This suggests that it may be inappropriate for corporate legal disciplines and regulation to position corporations within the liberal framework for state-individual relationships.
- This led me to advocate that *corporations should be regulated as sui generis – not public or private – legal tools*. This approach enables us to recognise the full diversity of organisational types – parent corporation, subsidiary, letterbox corporation, etc. – and regulate their distinctive operations in accordance with the public interest rather than with inappropriate reference to the egalitarian rights of individuals or the obligations of states. The most significant benefit of this approach is that it can facilitate a sustainable long-term overhaul of the

relationships between individuals, states and corporations without producing an immediate shock to the economy.

In summary, this book gives the reader insights into fundamental issues in contemporary corporate regulation. It explains and critically evaluates basic corporate theory and regulation in order to shed light on the discrepancy between desired and actual TNC behaviour. Many disciplines – including political economy, economics, psychology, anthropology, management studies, sociology, political science, criminology, theology, media studies and philosophy – were used to examine the limits and shortcomings of contemporary CL, CG and CSR. This led to various reform options as well as the introduction of a new framework and research paradigm for corporate regulation.

Valorisation

This research cannot be valorised from a conventional economic perspective. It does not provide new business models and cannot be used to develop products, services, processes or commercial activities. It is not innovative compared to an existing range of products and services, and there are no plans to commercialise my findings or examine its possible risks, market opportunities or costs.

Instead, this research is critical towards the unsustainable economic logic that seeks to convert so much of society into a commodity for competitive market exchange and commercial gain. This same logic turns out to be responsible for the methodological suboptimality and political bias of corporate legal disciplines and regulation.

It is not progressive or the state of the art in science to see how research can be converted into commercial value. It is rather a symptom of the destructive, expansionist tendencies of contemporary capitalism. The central question is not whether knowledge *can* be turned into value; the question is *whether* and *how* it should be used for this purpose. If we focus too much on the former question, then we risk forgetting about deeper questions on the relationship between science and society.

- Why do we do research?
- What is the purpose of universities?
- Is it ethical to turn public research into a vehicle for private profit?
- Does my work promote democracy or technocratic decision-making?
- Does it empower people or the power of organisations over people?

These important, normative questions are side-lined if we narrowly focus on the way that research *can* be turned into value.

However, if we depart from a focus on commercial products, services, processes and activities, and recognise that political economic design, theories and relations are also a

worthy object of examination and discussion, then we can think about the economic valorisation of this research in a broader and more profound sense.

We know that our current political economic system (i.e. transnational capitalism) is unsustainable and contributing towards escalating global crises such as climate change, biodiversity loss and the disruption of Earth's biogeochemical systems. TNCs are not solely responsible, but they are centrally implicated in these crises; they are among the most politically, economically and socially influential actors of our time. Their lobbying and investment activities have a dramatic influence on trade flows, public finances, economic development, employment conditions, applied technology, resource use, emission levels, cultural diversity, political decision-making and more.

It is well-documented that TNC decisions have often focused on short-term corporate results while neglecting social, economic and environmental harms. It is also well-documented that TNCs have spent vast budgets on manipulating public opinion, producing fake science, bribing politicians and undermining effective regulation.

Figure: Yes The Planet Got Destroyed²



"Yes, the planet got destroyed, but for a beautiful moment in time we created a lot of value for shareholders."

² Tom Toro, 'Yes The Planet Got Destroyed', cartoon for the New Yorker [picture] <https://www.newyorker.com/cartoon/a16995> (accessed 08-03-2020)

The need for intervention is clear. But how to intervene? This research explains that these issues are not simply a matter of individual misbehaviour by corporate 'bad apples' but are also the direct result of methodological suboptimality and political bias in the science of corporate legal disciplines and regulation. This is potentially helpful for many researchers, politicians, policy makers, NGOs, activists, business reformers and labour unions. It shows, specifically, how CL, CG and CSR can be reformed to help mitigate global crises and revolutionise our unsustainable political economy.

One of the most significant barriers to these reforms is that market-based approaches from economics have become the dominant approach to structuring social arrangements (including in corporate legal disciplines and regulation). A recurring emphasis on competition, efficiency and growth has made market-like arrangements ubiquitous and the use of non-economic approaches a relatively marginal phenomenon.

It is insufficiently recognised that economic logic cannot be used to determine when markets should or should not be used. The fact that a market arrangement may be efficient is not a conclusive argument in favour of markets; we should also ask whether alternative arrangements, including non-market ones, could be better. Economics is not equipped to perform this evaluation because it traditionally assumes that markets are fundamental to a civilised society (operating as a precursor to social and political structures). Presuming that markets came first introduces an inherent bias that prevents us from determining when market-based approaches should, or should not, be applied.

This research attempts to overcome this bias by exploring the relationship between corporate regulation and market-based approaches from both an orthodox and critical perspective. This may help a range of corporate legal researchers, practitioners and policy makers since it addresses a gap in the corporate legal literature in terms of research which outlines and reflects on fundamental theories and methods.

When these findings are combined with theories from philosophy of science, they lay the *foundation for a new, interdisciplinary and impartial paradigm for corporate research and regulation which does not inherently favour market-based or non-market-based approaches*. This can help researchers, practitioners and policy makers balance economic and non-economic values, potentially enabling a more sustainable relationship between corporations and the rest of society. This is especially useful for policy makers, researchers, NGOs and members of the public who are interested in matters of corporate power and regulation.

The new paradigm may lead to a better understanding of corporate activities, the nature of corporations as organisations, the influence of organisational structure on individual behaviour, the context of corporate activities, the relationships of corporations to the

state and so on. It should help us better understand corporate misbehaviour and lead to more effective corporate regulation in the public interest. Various illustrative suggestions from this new research paradigm were already outlined in the research summary. I will take the following steps to promote my research:

I aim to disseminate my research results findings among academics, politicians, businesses, NGOs and the broader public. I intend to upload a lecture on its contents to Youtube and am already in discussion with researchers and business leaders to see how these theories can be disseminated and applied. I will, moreover, produce articles on basic economic and corporate theory in an attempt to close the literature gap outlined above. I wish, lastly, to write a popular science book to make issues of corporate theory and regulation accessible to non-academic audiences.